IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2007

C O R A M :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.A.No.104 of 2001

The Corporation of Madras,
Rep. By the Commissioner,
Poonamallee High Road, Chennai. ... Appellant

-vs-

1. J.Periyanayaki

2. The Commissioner
   Hindu Religious and Charitable
   Endowments, Nungambakkam
   High Road, Madras.34.

3. The Executive Officer,
   Arulmighu Periyapalayathammal
   Temple, Royapettah.Madras-14. ... Respondents

Appeal filed under Clause 15 of the Letter Patent against the order of this Court dated 22.9.2000 made in W.P.No.4158 of 1994.

Q.P.No. 4158 of 1994: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandaus, for bearing the third respondent from proceeding with the construction of the Community Centre in the land comprised in S.No. 194/1 in Srinivasa Perumal Kovil, I Street, Royapettah, Madras-14, belong to the Arulmighu Periyapalayathamman Temple, Royapettah without complying with the letter of the Respondents dated 13.1.90 bearing No. Ka. Ka.9/1395 and direct the third respondent to deposit the sum of Rs.13,75,000/- with the first and second Respondent in terms of the value fixed by the Collector of Madras dated 30.4.92 bearing No. Mu.Mu. 71098/92 pending disposal of the above W.P.No.4158/1994.

For Appellant :: Mr.G.T.Subramanian
For Respondent :: Mr.M.K.Kabir for R-1
:: Mr.M.R.Murugesan, G.A.,(HR&CE)/R-2
:: Mr.S.Ramalingam for R-3

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J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

Concededly, the impugned land of an extent of three grounds and 1032 sq.ft. located in S.No.194/1, Royapettah, Chennai, belongs to Arulmighu Periyapalayathammal Temple, the third respondent herein. However, without initiating any proceedings under the Land Acquisition Act, by proceedings dated 11.1.1990, the Commissioner, Hindu Religious and Charitable Endowments, had given no objection to the Collector, Chennai, to take possession of the impugned land and also certified, as per G.O.(Misc.) No.1630, Revenue, dated 26.9.1984, that the impugned land is of no use to the temple, on condition that compensation to the temple shall be paid through the Commissioner, Corporation of Chennai, by the Collector.

2. Accordingly, the executive officer of the third respondent/temple, by proceedings dated 13.1.1990, handed over the possession of the impugned land to the Corporation of Chennai, for construction of a community hall. When the Corporation started constructing the community hall in the impugned land, a devotee moved this Court in W.P.No.4158 of 1994 for issuance of Writ of Mandamus forbearing the Corporation of Chennai, the second respondent herein, from proceeding with the construction of the community centre in the land comprised in S.No.194/1 in Srinivasan Perumal Koil I Street, Royapettah, Madras-15, belonging to Arulmighu Periyapalayathamman Temple, Royapettah, without complying with the letter of the executive officer of the temple, the third respondent herein, dated 13.1.90 bearing No.Na.Ka.No.9/1395 and to direct the appellant/Corporation to deposit the sum of Rs.13,75,000/- with the second and third respondents herein, in terms of the value fixed by the Collector of Madras dated 30-4-92 bearing No.Mu.Mu.71098/92 pending disposal of the above writ petition.

3. The learned single Judge, while appreciating the undisputed fact that the impugned land, which admittedly belonged to Arulmighu Periyapalayathamman Temple was taken over by the Corporation of Chennai, through the Collector, based on the proceedings of the Commissioner dated 11.1.90 referred to above without following due process of law as contemplated under the provisions of the Land Acquisition Act, directed the Corporation to pay compensation as per the market value that prevailed in the year 1994. Aggrieved by the said direction, the Corporation of Chennai has preferred the above appeal.

4. Concededly, the Corporation of Chennai, by its proceedings dated 13th November, 2000, had paid the sum of Rs.13,75,000/- being the amount demanded by the writ petitioner in the writ petition, while preferring the above appeal.

5. Now, the question is whether the temple is entitled for the market value that prevailed in the year 1994 or the amount already paid by the

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writ petitioner, viz., Rs.13,75,000/- on 13.11.2000 would suffice to meet the ends of justice.

6. It is true that the writ petitioner sought for a direction to the Corporation to pay a sum of Rs.13,75,000/-. But, at the same time, it is not in dispute that the respondents have taken possession of the impugned land on 13.1.1990 without following due process of law as contemplated under the provisions of the Land Acquisition Act.

7. In the instant case, the executive officer of Arulmighu Periyapalayathammal temple, the third respondent herein, being a subordinate to the Commissioner, without taking note of the interest of the temple, had most obediently surrendered the possession to the Corporation through the Collector, which necessitated the writ petitioner to move this Court. By the arbitrary and unreasonable proceedings of the Commissioner, HR & CE Department, dated 11.1.90 giving no objection to take over possession of the impugned land from the temple, without following the due process of law as contemplated under the provisions of the Land Acquisition Act, the legitimate and vested right of the temple, as conferred under the Land Acquisition Act, has been totally denied. The denial of right to have an opportunity under Section 5A of the Land Acquisition Act and the consequential denial to challenge the acquisition of the impugned land; as well as the deprival of right to claim enhanced compensation by way of a reference under Section 18(1) of the Land Acquisition Act, amount to a denial of statutory right. The arbitrary and unreasonable taking over of possession of the impugned land of the temple also offends the fundamental right of the Temple as conferred under Article 14 of the Constitution of India and it also violates the constitutional right under Article 300A of the Constitution of India.

8.1. It is settled law that there cannot be any estoppel against statutory rights. The plea of estoppel is closely connected with the plea of waiver, the object of both being to ensure bona fides in day-to-day transactions.

8.2. There can be no waiver of the fundamental right founded on Article 14 of the Constitution nor there can be waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy. It cannot be urged that it is open to a citizen to waive his fundamental rights conferred by Part III of the Constitution and the Supreme Court would be the bulwark of the fundamental rights which have been for the first time enacted in the Constitution and it would be a sacrilege to whittle down those rights in the manner attempted to be done, vide decision of the Constitution Bench of the Apex Court in Basheshar Nath v. Commissioner of Income-tax (A.I.R. 1959 SC 149).

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8.3. In MD.ARMY WELFARE HOUSING ORGANISATION v. SUMANGAL SERVICES (P) LTD. [(2004) 9 SCC 619], where the award of the arbitrator was challenged on the question of jurisdiction, the Apex Court held that although sitting in an appeal, the award of the arbitrator cannot be interfered with, it could certainly be interfered when the same suffers from non-application of mind or when a relevant fact is ignored or an irrelevant fact not germane for deciding the dispute is taken into consideration. Where an order has been passed without jurisdiction, the principles of estoppel, waiver and acquiescence will have no application, but there is no estoppel against a statute.

9. In the case on hand, the proceedings of the Commissioner dated 11.1.90 also unfortunately remains unchallenged all these years and in the absence of such lapse on the part of the temple and more particularly, when the writ petitioner herself had sought for a compensation of Rs.13,75,000/-, we are of the considered opinion that it may not be proper for this Court to extend the discretionary jurisdiction of judicial review conferred under Article 226 of the Constitution of India, directing the Corporation to pay the compensation at the rate that prevailed in the year 1994, being the date of filing of the writ petition.

10. Considering the entire aspects of the case referred to above, in order to meet the ends of justice, particularly taking note of the fact that the Corporation had already paid a sum of Rs.13,75,000/-, as evident from the proceedings of the Corporation dated 13.11.2000, while the land was taken over by them on 13.1.90, we direct the Corporation to pay interest at the rate of 9% per annum on the said amount for the period from 13.1.90 till 13.11.2000, which shall be settled in favour of the temple within a period of eight weeks from the date of receipt of copy of this order.

In the result, the order of the learned single Judge dated 22.9.2000 made in W.P.No.4158 of 1994 stands modified to the extent indicated above. The Writ Appeal is ordered accordingly. No costs.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Commissioner,
   Corporation of Madras,
   Poonamallee High Road, Chennai.
2. The Commissioner
   Hindu Religious and Charitable
   Endowments, Nungambakkam
   High Road, Chennai.

+ One cc to Mr. A. Dhiravianathan Advocate SR.No. 26338
+ One cc to Mr. G.T. Subramanian Addl Central Govt Corporation Standing Counsel sR 26417
+ One cc to Mr. S. Ramalingam Advocate sR 26181
+ One cc to Spl Govt Pleader sR 26283

VC (co)
sg 25/4/07

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